

# Memorandum

**100.0111**

To: San Francisco – Audit (DC)

Date: November 17, 1982

From: Headquarters – Legal (RLD)

Subject: Commercial Artist Sketch Layouts.  
Re: Mr. K--- B--- (No Permit)

This is in reply to your August 25, 1982 memorandum regarding the application of tax to sales of catalog layouts.

Mr. K--- B---, a commercial artist, designs catalog page layouts in the form of rough sketches for the ---. M--- Co. Mr. B--- keeps the original sketches and gives copies of the sketches to the copywriter, typographer, photographer, and paste-up person to use in designing and preparing the final advertisement. Each of such persons are under separate contracts with Magnin. We understand that the copies are not returned to Mr. B---.

Given the above information, you asked:

“1) Is artist’s layout sketches considered tangible personal property that would be subject to sales tax as a sale?”

Yes, it is our opinion that the sketches you sent for us to review are specifically covered by Sales and Use Tax Regulation 1540(c), which provides:

“Commercial Artists and Designers. The tax applies to the entire amount charged by commercial artists or designers for items of tangible personal property such as drawings, paintings, designs or sketches transferred to the client, whether or not the property is suitable for display or is useful for actual reproduction by photomechanical or other processes.

“Tax does not apply to separate charges for preliminary art as defined in (b)(4)(A).”

The sketches do not qualify as preliminary art, because the artist does not prepare the sketches solely to demonstrate an idea to M--- for approval before the artist prepares finished art. Rather, the sketches are the artist's finished art.

“2) Does artists transaction constitute a sale or lease under the above circumstances?”

The artist's transfer of possession of the sketches or copies of the sketches, for a consideration, is a sale for sales and use tax purposes.

We are returning the enclosed sketches for your files.

RLD:jw

Enclosures